



UNITED STATES OF AMERICA  
**FEDERAL LABOR RELATIONS AUTHORITY**  
BOSTON REGIONAL OFFICE  
10 Causeway Street, Suite 472  
Boston, Massachusetts 02222  
TEL: (617) 565-5100 - FAX: (617) 565-6262

November 25, 2014

Ivelisse Baez  
Executive Vice President  
AFGE Local 2608  
P.O. Box 13768  
San Juan, PR 00908

Re: FOIA-2015-000012

Dear Ms. Baez:

This is in reply to your request, which was received on November 21, 2014, in which you requested certain information under the Freedom of Information Act (the FOIA), 5 U.S.C. Section 552. You requested all documentation in Case No. BN-CA-14-0304 the Region considered in the dismissal of the charge.

Your request for the documents has been granted in part and denied in part. Enclosed you will find copies of the following documents:

1. The ULP charge, dated May 9, 2014;
2. Your affidavit, signed and dated August 29, 2014;
3. Your completed Data Questionnaire, signed and dated June 10, 2014;
4. Grievance form, dated February 26, 2014;
5. Data request sent to Ada Malave, dated March 31, 2014;
6. Data request sent to Ada Malave, dated April 20, 2014;
7. Response to data request from Ada Malave, dated May 12, 2014;
8. E-mail communication between you and Ada Malave.

The remaining documents in the case file which are responsive to your request are privileged from disclosure by one or more of the FOIA Exemptions. The investigative report and managerial memoranda in reply are protected from disclosure pursuant to Exemption 5's attorney work-product privilege. 5 U.S.C. section 552(b)(5). This privilege protects documents and other memoranda prepared by an attorney in anticipation of litigation.<sup>1</sup>

The investigative report and managerial memoranda in reply are also protected by the deliberative process privilege, also found under Exemption 5. The deliberative process privilege applies to documents that are (1) predecisional, i.e., before the adoption of agency policy<sup>2</sup>, and (2) deliberative, i.e., part of the process of making recommendations on legal or policy matters.<sup>3</sup> This exemption serves the primary policy interest of encouraging frank and open discussions between subordinates and superiors on matters of policy, as well as to protect against a

<sup>1</sup> *Hickman v. Taylor*, 329 U.S. 495, 509-150 (1947).

<sup>2</sup> *Mapother v. Department of Justice*, 3 F.3d 1533, 1537 (D.C. Cir. 1993).

<sup>3</sup> *Jordan v. Department of Justice*, 591 F.2d 753, 774 (D.C. Cir. 1978).

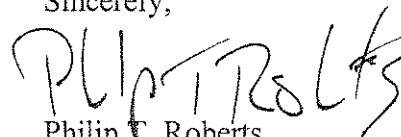
premature disclosure of proposed policy before it is finally adopted.<sup>4</sup> This Exemption has been held to protect preliminary recommendations, personal assessments, legal analyses, and routine inter- and intra-agency consultations by and among agency personnel in the course of an investigation.<sup>5</sup> Accordingly, briefing materials – such as summary reports or other documents prepared to advise a superior – are protected under the deliberative process privilege.<sup>6</sup>

Additionally, the investigative report and managerial memoranda in reply are protected from disclosure by Exemption 7(D).<sup>7</sup> This Exemption permits withholding of records or information compiled for law enforcement purposes that could reasonably be expected to identify a confidential source. This exemption turns on whether the source of the information received express or implied assurances of confidentiality from the government.<sup>8</sup> “A source should be deemed confidential if the source furnished information with the understanding that the [agency] would not divulge the communication except to the extent the [agency] thought necessary for law enforcement purposes.”<sup>9</sup> FLRA’s regulations provide an assurance of confidentiality to those persons who provide relevant information during the course of a ULP investigation.<sup>10</sup> If the FLRA were forced to reveal statements and information submitted or obtained during the investigation of the case, it would substantially deter the voluntary cooperation of witnesses, adversely impact the witnesses’ privacy interests, hinder obtaining sworn statements and other information from all potential sources and, consequently, substantially interfere with present and future enforcement proceedings.

There are no charges associated with your request.<sup>11</sup>

I am responsible for the above FOIA determination. In accordance with Section 2411.7 of the FLRA’s regulations, 5 C.F.R. Section 2411.7, you may obtain review of this determination by filing a written appeal with the General Counsel of the FLRA within 30 days after you receive notification of the denial of your FOIA request. Please send your appeal to the Freedom of Information Act Officer, FLRA, OGC, 1400 K Street, 2<sup>nd</sup> Floor, Washington, DC 20424-0001.

Sincerely,

  
Philip T. Roberts  
Regional Director

cc: OGC

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<sup>4</sup> *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975).

<sup>5</sup> E.g., *Purdue Farms*, 1997 U.S. Dist. LEXIS 14579 at \*\*30-36 (NLRB investigation).

<sup>6</sup> See, e.g., *Thompson v. Department of the Navy*, No. 97-5292, 1998 U.S. App. LEXIS 7789, at \*1 (D.C. Cir.), cert. denied, 119 S. Ct. 446 (1998) (materials created to brief senior officials).

<sup>7</sup> 5 U.S.C. section 552(b)(7)(D).

<sup>8</sup> See *McDonnell v. United States*, 4 F.3d 1227, 1258; *United States Department of Justice v. Landano*, 508 U.S. 165, 171-176 (1993). (*Landano*).

<sup>9</sup> *Landano*, 508 US at 174.

<sup>10</sup> Section 2423.8(d) of the Federal Labor Relations Authority Rules and Regulations.

<sup>11</sup> 5 C.F.R. Section 2411.10.